IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

BERNARD KATZ, Sole Proprietor, d/b/a TELESONIC PACKAGING CORP.,	)	
Defendant Below/Appellant,	)	
v.	)	C.A. No. N19A-02-001 RRC
DISORB SYSTEMS, INC.	)	
Plaintiff Below/Appellee.	)	

Submitted: May 15, 2019
Decided: July 19, 2019

On Appeal from the Court of Common Pleas. **AFFIRMED.**

ORDER

Bernard Katz, Sole Proprietor, d/b/a Telesonic Packaging Corp., Wilmington, Delaware, Defendant Below/Appellant, *pro se*.

Bruce W. McCullough, Bodell Bové, LLC, Wilmington, Delaware, Attorney for Plaintiff Below/Appellee DiSorb Systems, Inc.

COOCH, R.J.

This 19th day of July, 2019, upon consideration of Appellant's appeal from the Court of Common Pleas it appears to the Court that:

1. In July of 2016 DiSorb Systems, Inc. ("Plaintiff") ordered several commercial packaging machines from Bernard Katz, Sole Proprietor, d/b/a Telesonic Packaging Corp ("Defendant"). The equipment was designed to package products in water-soluble plastic film ("PVA film"). The equipment included specialized machines that could only be operated in specific climate-controlled environments. Plaintiff received the shipment of the equipment in late June and July of 2017.

However, the equipment would not function properly. Defendant attempted to aid Plaintiff in the efforts to make the equipment operable, but all efforts failed. Defendant advised Plaintiff that upon return of the inoperable equipment to Defendant, Plaintiff would receive a full refund of $24,682.00. Although Plaintiff returned the equipment to Defendant, Defendant did not refund Plaintiff. This lawsuit followed.

2. A bench trial in the Court of Common Pleas was held on December 17–18, 2018. On January 29, 2019, the Court of Common Pleas issued a written decision which ruled in favor of Plaintiff. The Court of Common Pleas found that: (1) a valid warranty existed at all times relevant which (2) covered the equipment against defects; (3) that the equipment was defective; and (4) that the only proper remedy was an award to Plaintiff of $24,682.00, plus interest and costs. On February 5, 2019, Defendant filed this appeal. On appeal Defendant argues that the Court of Common Pleas erred in several ways. First, Defendant argues that there was "language in the [equipment's] warranty that obviates the requirement that [Defendant] refund any monies" to Plaintiff.[1] Second, Defendant argues that he verbally withdrew any offer to refund money to Plaintiff. Lastly, Defendant contends that the Court of Common Pleas erred when it placed on Defendant the burden of establishing that Plaintiff's facility could not maintain the requisite environmental conditions. Defendant argues that the warranty language required that Plaintiff must establish that its facility was capable of running the equipment at the correct environmental conditions.

3. On an appeal from a decision of the Court of Common Pleas, the Superior Court "has the duty to review the sufficiency of the evidence and to test the propriety of the findings below."[2] If the Court of Common Pleas' findings are "sufficiently supported by the record and are the product of an orderly and logical deductive process, the Superior Court must accept them, even though, independently, it might have reached an opposite conclusion."[3] The Superior Court may only make findings of fact that contradict those of the Court of Common Pleas when "the record reveals that the findings below are clearly wrong and the [Superior Court] is convinced that a mistake has been made which,

[1] Def.'s Opening Br. at 8, *Katz v. DiSorb Systems, Inc.*, N19A-02-001 RRC (Apr. 17, 2019).
[2] *State v. Cagle*, 332 A.2d 140, 142 (Del. 1974).
[3] *Hsu v. Great Seneca Financial Corp.*, 2010 WL 2635771, at *1 (Del. Super. Ct. June 29, 2010) (citing *Cagle*, 332 A.2d at 142).

in justice, must be corrected."[4] The Superior Court reviews issues of law *de novo*.[5]

4. This Court finds that the decision of the Court of Common Pleas is a product of an orderly and logical process, and is sufficiently supported by the record. The primary issue after trial was whether the express warranty protected Plaintiff's loss.[6] The trial court found that there was no evidence presented to dispute that a one-year warranty was provided to Plaintiff guaranteeing against defects in material or workmanship of the equipment, and that the warranty was applicable at the time of Plaintiff's alleged loss.[7] Further, the trial court found, and this Court agrees, that Plaintiff established by a preponderance of the evidence that that equipment was defective upon receipt. Defendant admitted in his testimony that he had not been able to get the equipment to operate with the PVA film, even when the equipment was at Defendant's facility. Defendant acknowledged the defects existed by offering Plaintiff a total refund upon return of the equipment.

5. Defendant's contention that Plaintiff did not establish compliance with the warranty is without merit. Plaintiff submitted sufficient evidence to establish by a preponderance of the evidence that its facility could maintain the environmental standards the equipment required to function. Defendant merely made unsupported allegations that the conditions of Plaintiff's facility could not maintain the requisite environmental conditions. Defendant did not offer any evidence to support his allegations. Such unsupported allegations in no way placed a burden on Plaintiff to further establish the conditions at its facility. Without any evidence to the contrary, Plaintiff's evidence that the environmental conditions were sufficient stood essentially undisputed.

6. Similarly, Defendant's claim that he retracted his offer to fully refund Plaintiff is unsupported. Plaintiff's CEO Mr. McLaughlin testified that Defendant never rescinded the offer of a full refund, verbally or otherwise. Defendant could not recall when he rescinded his offer, and

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[4] *Cagle*, 332 A.2d at 143.
[5] *Evans v. State*, 2019 WL 1938098, at *3 (Del. Super. Ct. Apr. 30, 2019).
[6] *See* Decision After Trial at 6, *DiSorb Systems, Inc. v. Katz*, CPU4-18-001554 (Del. Com. Pl. Jan. 29, 2019).
[7] *See id.* at 7.

admitted "that he doesn't remember communicating [a rescission.]"[8] Defendant "merely ensures [sic] that he must have."[9] As the Court of Common Pleas explained, Defendant's mere speculation that he must have retracted the offer is not sufficient evidence to dispute Plaintiff's testimony that Defendant did not communicate a rescission.

7. Plaintiff met its burden of establishing by a preponderance of the evidence that there was a valid warranty which Defendant breached, that Plaintiff followed all conditions of the warranty, and that Defendant offered a refund of the purchase price sans rescission. Defendant's contentions to the contrary were mere speculation. The Court of Common Pleas was not persuaded by this lack of evidence, and explained as much in a well reasoned decision. This Court agrees.

Therefore, for the foregoing reasons, the judgment of the Court of Common Pleas is **AFFIRMED.**

IT IS SO ORDERED.

Richard R. Cooch, R.J.

cc: Prothonotary

[8] *Id.* at 8.
[9] *Id.*